

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 572 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

SHAILISHKUMAR BHAILAL DESAI

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Appearance:

Mr.S.A.Pandya, Addl. Public Prosecutor for the Appellant.

Mr. D.V.Mehta, Advocate for the respondent.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 28/10/96

ORAL JUDGEMENT

The State of Gujarat has filed the present appeal challenging the order dated 7-6-89 passed by the learned Judicial Magistrate, First Class, Jambusar in Summary Case No. 939/86 acquitting the respondent for the offence punishable under section 7 read with section 16 of the Prevention of Food Adulteration Act.

The complainant Food Inspector had visited the shop of the respondent of "Shaileshkumar & Brothers" in the town of Sarbhan on 20-2-1986 and had taken the samples of turmeric powder and after following the due procedure sent the sample to the Public Analyst for analysis. After receipt of the report from the Public Analyst, as he found the samples of turmeric powder as adulterated, the complaint was filed. It appears that the respondent was served with the notice under section 13 (2) of the Act and, therefore, he applied for getting the samples analysed by the Central Food Laboratory. It appears that in the report submitted by the Central Food Laboratory also adulteration was noticed. The learned Magistrate, after considering the evidence on record, by his impugned judgment and order found that the case against the respondent is not duly proved and, therefore, as stated above, passed an order of acquittal.

Since this appeal is required to be dismissed on the short ground that the Public Analyst had not prepared the report on the day on which the sample was examined and analysed, and that there was a delay in preparing the report, no reliance can be placed on the report of the Public Analyst. It is an undisputed fact that the Public Analyst received the sample on 21-1-1986 and examined the same on 5th March, 1986. However, as can be seen from the endorsement made by him on the report, he had signed the report on 21st March 1986. Thus there was a delay of about 22 days in preparing the report. This Court (Coram: H.R.Shelat,J.) in Criminal Appeal No. 374/87 decided on 30th May 1996 has laid down that if the report is not prepared and signed by the Analyst on the same day when the sample sent to him is analysed, the report prepared will cease to have any evidentiary value. This view is taken so that the result of one sample may not be mixed or linked up with the another sample and the accused may not have to suffer because of the mistake on the part of the laboratory. In view of this ruling, I am of the opinion that no reliance can be placed on the

report of the Public Analyst. Apart from that the learned Magistrate has also recorded a finding that there is a wide variation between the reports of the Public Analyst and the Central Food Laboratory in respect of the samples collected in the present case. In view of this, the learned Judge was of the view that the respondent is entitled to the benefit of doubt. In my view the reasoning of the learned Judge is just and proper and no interference is called for .

In the result, the appeal fails and is dismissed.

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